

# SENATE BILL REPORT

## SB 6152

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As of February 6, 2012

**Title:** An act relating to streamlining water right permitting and appeals.

**Brief Description:** Streamlining water right permitting and appeals.

**Sponsors:** Senators Hatfield and Honeyford.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 1/19/12, 1/23/12, 2/02/12 [DPS].

Ways & Means: 2/06/12.

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 6152 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Shin, Vice Chair; Honeyford, Ranking Minority Member; Becker, Delvin, Haugen, Hobbs and Schoesler.

**Staff:** Diane Smith (786-7410)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Michael Bezanson (786-7449)

**Background:** Current law requires construction work to be commenced on any project within a reasonable time as prescribed by the Department of Ecology (Ecology). If good cause is shown, Ecology must extend the time as reasonably necessary.

There are currently 20 water conservancy boards operating in Washington. Conservancy boards are authorized to issue records of decision on applications for water right transfers. The final decision to affirm, deny, or modify board decisions resides with Ecology. Ecology may affirm, reverse, or modify the board's decision within 45 days with a 30-day extension allowed. If Ecology fails to act within these timelines, the board's record of decision becomes final.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill (Recommended Substitute):** Any water right permit, previously approved permit extension, or water right change or transfer, for construction work and for putting water to beneficial use is eligible for a five-year extension. The five-year extension is authorized after payment of the applicable extension fee under RCW 90.03.470. The five-year extension does not apply to the Quincy ground water subarea.

While under the five-year extension, Ecology may not change the quantity of water authorized by the permit or modify any other terms or conditions of the permit. The five-year extension is an alternative to the existing good-cause extension.

Until December 31, 2016, the conservancy board may elect to issue a final decision on water right changes and transfer applications submitted to the board for consideration. The final decision may be provided if requested to do so by the applicant and if the applicant and the board agree in advance that the party defending the board's decision in case of appeal will be either the board; the applicant; or the board and applicant jointly. The boards' decisions are appealable to the Pollution Control Hearings Board. Ecology is not authorized to review and affirm, reverse or modify final conservancy board decisions. Ecology has the same appeal rights as any other aggrieved person, and could make an appeal through the Pollution Control Hearings Board.

Appeals of penalties of \$15,000 or less may be heard by an administrative law judge employed by the board.

**EFFECT OF CHANGES MADE BY AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute):** Clarifying changes are made to the board's option to issue a final decision. Qualifiers are placed on the board's authority to elect to make a final decision. The board may elect to issue a final decision if requested to do so by the applicant and if the applicant and the board agree in advance that the party defending the board's decision in case of appeal will be either the board; the applicant; or the board and applicant jointly.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Agriculture, Water & Rural Economic Development):** PRO: Permit extensions are the result of the economic slow-down and consequent project delay. Almost all time extensions are currently approved. The automatic five-year extension has minimal cost and process for the landowner, DOE, and PUDs. Making the boards' decisions final eliminates duplicative review. PCHB can assign these reviews to the Office of Administrative Hearings thus freeing up PCHB. DOE is in favor of the ministerial five-year extension with the five-year sunset. This relieves DOE's limited water staff's backlog. Boards are trained by DOE with a 32-hour course and eight hours per year in continuing education. Questions can be resolved in court, if necessary.

CON: Water decisions are legally and technically complex. Boards are volunteers and need oversight. In a number of instances, DOE has made corrections.

OTHER: DOE is a gap-stop for the boards' change and transfer decisions. There are complicated decisions, and DOE's review adds value while reducing risk and costs of litigation. Since board members are volunteers, some may shy away from serving.

**Persons Testifying (Agriculture, Water & Rural Economic Development):** PRO: Bill Clarke, WA PUD Assn.; Courtney Barnes, Assn. of WA Business; John Stuhlmiller, Farm Bureau; Scott Hazelgrove, WA Assn. of Sewer and Water Districts.

CON: Bruce Wishart, Center for Environmental Law and Policy, Sierra Club.

OTHER: Maia Bellen, DOE.

**Staff Summary of Public Testimony (Ways & Means):** PRO: We support the bill but have concerns about the costs. The proposed amendment eliminates the section that contains potential costs without eliminating the policy intent. We support the amendment.

OTHER: The proposed amendment alleviates many of our concerns with the bill.

**Persons Testifying (Ways & Means):** PRO: Bill Clarke, WA Public Utilities District Assn.

OTHER: Bruce Wishart, Center for Environmental Law and Policy, Sierra Club; Jim Skalski, DOE.